(1)

92-406

No. _____

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1992

ANDREW MELECHINSKY, ET AL
Petitioners,

vs.

WILLIAM C. ANDERSEN, ET AL

Respondents,

Claim For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

CLAIM FOR WRIT OF CERTIORARI

Andrew Melechinsky
(For Self, under duress)

P. O. Box 3182
Enfield, Conn. 06083
(203) 623-5278

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

It is imperative that the Supreme Court address the questions presented in this case because the lower courts have been ignoring the U. S. Constitution and Bill of Rights as if they did not exist.

1. Did the U. S. District Court for the District of Connecticut have constitutional jurisdiction to entertain an action against Andrew Melechinsky?

2. Did the U. S. District Court err in deciding to put the Melechinsky home in jeopardy without seeking the approval of a jury (two juries, probable cause and trial)?

3. Did the U. S. District Court err in failing to address and respond to all of the Constitutional defenses raised?

4. Did the U. S. District Court err in ignoring the Melechinsky children's

ownership rights to due process protections, i.e., notice, opportunity to defend, etc.?

5. Did the U. S. District Court err in ignoring Mary Melechinsky's ownership rights to due process protections, i.e., notice, opportunity to defend, etc.?

6. Did the U. S. District Court err in failing to issue a Writ of Prohibition?

7. Did the U. S. Court of Appeals err in failing to issue a Writ of Prohibition?

8. Can a judge or other official lawfully ignore or violate the United States Constitution?

9. Does a judge or other official have the power to order forfeiture of contested property without the consent of a jury after a trial on the merits?

LIST OF PARTIES

Petitioners:

Andrew Melechinsky, For Self, under duress, and

Charles Burke
99 Tolland St.
East Hartford, Conn. 06108

Ralph J. Lombardi
224 S. Elm St.
Windsor Locks, Conn. 06096

Juanita Martin
4 Grant Rd.
Enfield, Conn. 06082

Francine Pedemonti
and
Theodore Pedemonti
18 Hartford Ave.
Enfield, Conn. 06082

Respondents:

William C. Andersen, U. S. Marshal, and
Peter C. Dorsey, U. S. District Judge

Represented by,

AUSA Carl Schuman
450 Main St., Rm. 328
Hartford, Conn. 06103

AUSA John B. Hughes
P. O. Box 1824
New Haven, Conn. 06508

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The Petitioners claim that a Writ of Certiorari must issue to review the denial of a Motion For Reinstatement, by the United States Court of Appeals for the Second Circuit, entered in this proceeding on June 8, 1992.

JURISDICTION

This court has jurisdiction under Art. III, Sec. 2 of the United States Constitution, and Title 28, U. S. Code, Sec. 1254.

Under Rule 10 of the Rules of the Supreme Court:

> A petition for a writ of certiorari will be granted ... When a United States Court of Appeals ... has so far departed from the accepted and usual course of judicial proceedings ...as to call for an exercise of this Court's power of supervision."

STATEMENT OF THE CASE

This case originated on August 29, 1988 when an entity known as the United States of America filed an action against Petitioner Melechinsky entitled UNITED STATES OF AMERICA v. ANDREW J. MELECHINSKY, ET AL, Docket No. H-88-590 in the U. S. District Court for the District of Connecticut, in which it was attempting to transfer an alleged liability of Tivian Laboratories, Inc. to Mr. Melechinsky, for the purpose of "foreclosing" on the Melechinsky family property.

The Petitioners contend that the Internal Revenue Service manufactured a corporate tax debt out of thin air, assessed that debt against Mr. Melechinsky, a non owner official of the corporation and turned the "debt" over to

the U. S. Justice Department for collection. The very nature and reason for existence of corporations is to exempt officials from personal liability for the debts of the corporation.

Said Justice Department fraudulently sought "to reduce to judgment assessments made against" Mr. Melechinsky (there were no valid assessments), "to set aside the fraudulent conveyance of the Andrew J. Melechinsky's interests in" their property (no jury had ever declared the conveyance to be fraudulent), and "to foreclose its federal tax liens upon that property (there were no tax liens on the property; only a Notice of Federal Tax Lien). A Notice of Lien is not a lien. A valid lien can be established only after a trial by jury on the merits.

During many years of experience with the Constitutional incompetence of the federal court system, the Petitioners have learned that, under Amendment Article X of the U. S. Constitution, the federal courts cannot have jurisdiction in state territory without the knowing and willing consent of all parties. The record shows clearly that Mr. Melechinsky did not consent.

Mr. Melechinsky declined to be under federal jurisdiction by filing an AFFIDAVIT AND NOTICE OF DISCLAIMER OF UNLAWFUL EQUITY JURISDICTION (App. 3) in the land records and sent an original, Certified Return Receipt, to the clerk of the U. S. District Court with copies to the other parties involved.

Under Constitutional Common Law this was an automatic and absolute estoppel to

the action which could only be overcome by application to the federal and state Grand Juries. This was never done.

The presiding judge, who is believed by the Petitioners to have a grudge against Mr. Melechinsky, ignored the Affidavit as if it did not exist, arbitrarily declared him to be in default, ordered and approved the "sale" of his home and ordered his ejectment, presumably because he did not file an answer in the form approved by the "rules".

The judge appears to have forgotten 28 USC 2072 which mandates that, "rules shall not abridge, enlarge or modify any substantive right ...".

The judge also appears to be unaware of Amendment Article X of the U. S. Constitution which forbids any government

actions which are not clearly spelled out in the Constitution.

There is no power delegated in the Constitution which would allow the U. S. Government to claim Mr. Melechinsky's home property in its own court.

In his Affidavit, Mr. Melechinsky claimed all of his Constitutionally secured and guaranteed rights including but not limited to those mandated in Amendments IV, V, and VII, especially the right of trial by jury. ABSENT TRIAL BY JURY THERE COULD BE NO LAWFUL SEIZURE OR EJECTMENT.

No warrant based upon probable cause had ever been issued under the Constitutionally secured right to judicial proceedings according to the course of the Common Law, which requires a finding of probable cause by a probable

cause jury (See Amendment IV). In his Affidavit, Mr. Melechinsky claimed his 4th, 5th, 7th, 9th, and 10th Amendment protections against the unlawful jurisdiction of the Federal Court and the Internal Revenue Service over his "person, property, books and records", and he claimed all of his other rights secured and guaranteed by the Bill of Rights.

Mr. Melechinsky consistently objected to the U. S. acting as a judge in its own cause. He consistently claimed his right to a neutral judge at law and a Probable Cause Jury to determine whether or not there was cause to bring an action against him.

He deeded the property to his children long before the I. R. S. showed an interest in him. Should the deed to

the children be invalidated by a jury, half ownership of the property with rights of possession would revert to his wife Mary Melechinsky.

When it became evident that the U. S. Marshal intended to eject the Melechinsky's from their home by force, the Petitioners, still denying Jurisdiction to the federal court, filed for a Writ of Prohibition in the state Superior Court, in Hartford, Connecticut.

In clear disregard for Amendment X of the U. S. Constitution, and in a clear conflict of interest, federal officials "removed" the action to their own court, forcing the Petitioners into an unwanted jurisdiction in order to seek the redress to which they are entitled.

When, as was to be expected, the U. S. District Judge dismissed the Claim for

a Writ of Prohibition, the Petitioners were compelled to appeal to the Second Circuit Court of Appeals for such a Writ.

It was the denial of that appeal, with no reasons given for the blatant disregard for the Constitutional claims of the Petitioners, which is the basis for this Petition for a Writ of Certiorari.

In the meantime, as a result of the unlawful orders of the judge, U. S. Marshal William C. Andersen and six other armed men, broke into and entered the Melechinsky home at 29 Fairfield Road, Enfield, Conn. on January 16, 1992, assaulted and kidnapped Andrew Melechinsky, abducted his wife, robbed the house and prevented them from returning.

Said William C. Andersen also filed an invalid "Marshal's Deed" in Vol. 679

Page 0001 of the Enfield Land Records on January 7, 1992.

Subsequently, the District Director of the Internal Revenue Service "deeded" a non-existent "right, title and interest" in the property to a party named Patrick Snow, in Vol. 708, Pg. 0133 of the Land Records.

The deeds and the court actions leading to them, are not authorized, in fact are forbidden, by the United States Constitution from which Mr. Andersen derives his authority.

In his "deed" Mr. Andersen states that he has "full power and authority ... to grant and convey the premises" to the United States in obvious contradiction of Amendment X of the U. S. Constitution which declares that "The Powers not delegated to the United States by the

Constitution ... are reserved ...".

Mr. Andersen also admitted that the "premises are conveyed further subject to ... any and all provisions of any public ... law". Public law does not permit an involuntary property transfer without the concurrence of a jury.

The Petitioners have been effectively deprived of their unalienable right to bring the above facts before a jury, and as a result, Mr. Melechinsky and his wife have been subjected to irreparable harm without due process.

ARGUMENT ON THE QUESTIONS

Argument 1. Did the U. S. District Court for the District of Connecticut have constitutional jurisdiction to entertain an action against Andrew Melechinsky?

Amendment X of the U. S. Constitution is clear in its mandate that,

> "The powers not delegated to the United States by the Constitution ... are reserved ...".

There is no authority in the U. S. Constitution for any federal court to assume jurisdiction in a controversy concerning property located in state territory without a waiver of rights by all concerned parties. In fact, without waiver, the federal courts are barred from assuming such jurisdiction.

Argument 2. Did the U. S. District Court err in deciding to put the

Melechinsky home in jeopardy without seeking the approval of a jury (two juries, probable cause and trial)?

Under Amendment X of the U. S. Constitution,

> "The powers not delegated to the United States by the Constitution ... are reserved ...".

The United States (District Court) did not have the authority to put the Melechinsky home in jeopardy.

Amendment VII of the U. S. Constitution guarantees that,

> "In suits ... the right of trial by jury shall be preserved ..."

Argument 3. Did the U. S. District Court err in failing to address all of the Constitutional defenses raised?

It was/is the duty of the U. S. District Court to address all of the

Constitutional defenses raised.

Instead, the Court made outrageous decisions and issued invalid decrees without explaining how they could come into harmony with the prohibitory provisions of the Constitution quoted by the Petitioners, especially Amendment Article IV, which guarantees that,

> "The right of the people to be secure in their ... houses ... against unreasonable ... seizures, shall not be violated".

Under Amendment Article IX it is the (sovereign) citizen who determines what is unreasonable with regard to his property unless a jury determines otherwise.

Argument 4. Did the U. S. District Court err in ignoring the Melechinsky children's ownership right to due process

protections, i.e., notice, opportunity to defend, etc.?

The Melechinsky children were, and still are, the lawful owners of the subject property. It is inconceivable that they could be removed from ownership without a court action being filed against them.

The children were never made the Defendants in any court action.

Argument 5. Did the U. S. District Court err in ignoring Mary Melechinsky's ownership right to due process protections, i.e., notice, opportunity to defend, etc.?

Assuming, for the sake of argument, that the trust ownership of the children was properly voided, Mary Melechinsky would revert to her original half ownership of the property.

In the District Court action, Mrs. Melechinsky was not listed as a Defendant in her capacity as a half owner. That status still prevails.

Argument 6. Did the U. S. District Court err in failing to issue a Writ of Prohibition?

It was/is the duty of the U. S. District Court to issue a Writ of Prohibition in response to all of the Constitutional issues raised, and/or to give Constitutional reasons for any denial of Constitutional claims.

Amendment Article V. of the United States constitution guarantees that,

> "No person shall be ...
> deprived of ... property
> without due process ..."

Due process includes a jury trial. Though jury trial is mandated, there has been no jury trial in this action.

Argument 7. Did the U. S. Court of Appeals err in failing to issue a Writ of Prohibition?

This was/is a compelling issue in which a Writ of Prohibition was clearly mandated, pending a trial on the merits.

It was the clear and inescapable duty of the U. S. Court of Appeals to issue a Writ of Prohibition, declaring that Mr. Melechinsky and his wife must be left in peace in their own home.

> "The poorest man may, in his cottage, bid defiance to all the forces of the crown. It may be frail, its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dares not cross the threshold ...". -William Pitt.

In ejecting the Melechinskys from their home, the U. S. Marshal did what the King of England dares not do, much to

the discredit of the Marshal.

Argument 8. Can a judge or other official lawfully ignore or violate the United States Constitution?

No judge or other official can ignore or violate the United States Constitution and its mandates, especially Article VI, Sec. 2 which states:

> "This constitution ... shall be the supreme Law ... and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

Art. VI Section 3 mandates that,

> "All executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution."

Argument 9. Does a judge or other official have the power to order forfeiture of contested property without

the consent of a jury after a trial on the merits?

Amendment X of the U. S. Constitution bars judges and other officials from ordering forfeiture of contested property.

The Petitioners point out, with alarm, that the unconstitutional exercise of power by administrative public servants is criminal in nature and out of harmony with the Constitution.

CONCLUSION

Andrew Melechinsky and his wife have been grievously harmed by a litany of violations of Constitutional laws and other crimes, committed by government officials and the courts.

The Petitioners are entitled to, and expect from this court, a reversal of the

Appellate Court denial of the Writ of Prohibition and an order requiring the restoration of Mr. Melechinsky and his wife to their home pending a due process hearing before a probable cause jury.

Dated: Aug. 19, 72 Petitioners (under duress),

ANDREW MELECHINSKY
P. O. Box 3182
Enfield, Conn. 06083
Ph: 203-623-5278

Charles Burke
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East Hartford, Conn.
06108

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Francine Pedemonti
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Theodore Pedemonti
18 Hartford Ave.
Enfield, Conn. 06082

No. _____

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In The

Supreme Court of the United States

October Term, 1992

ANDREW MELECHINSKY, ET AL
Petitioners,

Vs.

WILLIAM C. ANDERSEN, ET AL

Respondents,

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MELECHINSKY V. ANDERSEN 92-6001
NOTICE OF MOTION
for Reinstatement
of the Appeal

MOTION BY	OPPOSING COUNSEL:
Andrew Melechinsky	Carl J. Schuman
P. O. Box 3182	450 Main St., Rm 328
Enfield, Conn. 06082	Hartford, Ct. 06103
203-623-5278	203-240-3270

Judge or agency whose order is being appealed:

Arbitrary dismissal by this court.

Brief statement of relief requested:

Grant of Writ of Prohibition and restoration to domicile at 29 Fairfield Rd., Enfield, Conn.

By (Signature) Appearing for:
/s/Andrew Melechinsky Melechinsky, Et Al

5/13/92

IT IS HEREBY ORDERED that the motion be and hereby is denied

/s/Wilfred Feinberg
/s/R. K. W.
/s/F. X. A.

JUN 08 1992

App. 2

United States Court of Appeals
for the
Second Circuit

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 9th day of April, one thousand nine hundred and ninety two

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Andrew Melechinsky; Charles Burke; Ralph Lombardi, Juanita Martin; Francine Pedemonti; Theodore Pedemonti,
Plaintiffs-Petitioners,

v. 92-6001

William C. Andersen, U. S. Marshal; Hon. Peter C. Dorsey, U. S. District Court Judge,
Defendants-Appellees

For the reasons set forth below, this Court has determined, sua sponte, to dismiss the appeal.

Accordingly, the appeal is hereby DISMISSED. So ordered.

/s/Wilfred Feinberg
/s/R. K. W.
/s/F. X. A.
Circuit Judges

App. 3

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

A F F I D A V I T

AND NOTICE OF DISCLAIMER OF
UNLAWFUL EQUITY JURISDICTION

The undersigned Andrew Melechinsky is not under the jurisdiction of the Internal Revenue Service. He has no contract with the I.R.S. No jury has ever found probable cause. No jury has ever declared a liability.

Andrew Melechinsky does not owe any money to the Internal Revenue Service or to any federal agency. In fact, the I. R. S. owes money to Andrew Melechinsky, funds obtained from him by fraud and theft.

Said Andrew Melechinsky, on behalf of himself and his wife, totally disclaims the unlawful equity jurisdiction which may be sought by the so-called Internal Revenue Service over our persons, property, books and records which are private, protected, privileged and guaranteed under the 4th, 5th, 7th, 9th and 10th Amendments to the U. S. Constitution and I continue to assert the rights therein protected by Supreme Law.

I will not be drawn into conversation, argument, or participation in any unlawful chancery proceeding, whatsoever. I demand a court of law/(as opposed to equity), neutral judge at law, and a probable cause jury to decide whether or not there is cause to bring an action against me.

Further, be it known that I will not

be willingly hauled into a chancery court to show cause or to be subjected to an equity trial.

No court (sitting in executive chancery, under color of law exercising a jurisdiction foreign to our constitution) can compel or force me to be deprived of any of my constitutional rights. If the Constitution and the Bill of Rights have been suspended I assert my right to know it. If the Constitution and the Bill of Rights have not been suspended I continue to assert those rights protected therein and I do not waive any of them.

Should a judge, chancellor or clerk in equity proceed against notice, he does so at his own peril without any immunity from criminal charges or an action by the injured party. Federal personnel in their official capacity can be sued for damages by a person damaged by an unlawful equity decree. This is a formal notice; govern yourselves accordingly.

/s/Andrew Melechinsky

STATE OF CONNECTICUT)
) ss Windsor Locks, Sep. 19, 1988
COUNTY OF HARTFORD)

Personally appeared before me the above named Andrew Melechinsky and acknowledged that the statements contained in the above Affidavit and Notice of Disclaimer of Unlawful Equity Jurisdiction are true and correct to the best of his knowledge and belief.

/s/
Notary